Metro Health, Inc., d/b/a Hospital Metropolitano *and* Unidad Laboral de Enfermeras (os) y Empleados de la Salud. Case 24–CA–8149

July 16, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On September 29, 2000, Administrative Law Judge George Alemán issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief and a brief in support of the administrative law judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

The judge found that the Respondent violated Section 8(a)(5) of the Act by withdrawing recognition from and refusing to bargain with the Union as the representative of the Respondent's employees in six bargaining units. For the reasons discussed below, we agree with the judge's finding.

The facts, which are undisputed, are set forth in detail in the judge's decision. In brief, the Union was certified as the representative of the employees of the Respondent's predecessor in 1996. The Union and the predecessor engaged in collective bargaining but failed to conclude an agreement. The Respondent acquired the predecessor's assets on March 11, 1998,[2] and commenced bargaining with the Union on April 3. The last bargaining session took place on September 17. The Respondent withdrew recognition on December 3, stating that it had reason to believe that the Union no longer had the support of a majority of the employees.

During the year following its certification, a union enjoys an irrebuttable presumption of majority support.[3] At the end of the certification year, the presumption remains but is rebuttable.[4] Under the controlling law at the time of the relevant events here, an employer could rebut the presumption by showing either that the union had, in fact, lost the support of a majority of the unit employees, or that the employer had a good-faith reasonable doubt (uncertainty), based on objective evidence, of the union's majority status.[5] The Respondent does not contend that the Union had actually lost majority support. Further, the judge found, and we agree, that the Respondent has not established that it had a good-faith reasonable doubt (uncertainty) regarding the Union's majority status.[6]

The Respondent relied on several factors in withdrawing recognition, including a group of decertification petitions that were filed with the Board on August 20 and presented to the Respondent on August 21. Those petitions were signed by only one unit employee, but they were accompanied by an earlier petition, dated April 21, that was signed by a large number of unit employees. The April 21 petition stated:

> The undersigned below, all of the employees of Hospital Metropolitano, disallow Mr. Radames Quiñones Aponte to represent us or to bargain any employment condition in our name. In addition, we will not authorize check-off dues [sic] in favor of [the Union] as an employment condition.
>
> This is our firm and voluntary decision.

The Respondent also relied on a demonstration that occurred outside the facility on June 21, as well as the fact that no unit employee had taken part in negotiations since July.

[1] We shall modify the judge's Order and notice to accurately reflect the scope of one of the bargaining units.

[2] Unless otherwise stated, all dates refer to 1998.

[3] See, e.g., *Burger Pits*, 273 NLRB 1001 (1984), enfd. 785 F.2d 796 (9th Cir. 1986).

[4] Id.

[5] Id. The Board historically phrased the latter standard in terms of good-faith *doubt*—by which it meant *disbelief*—as to the union's majority status. In *Allentown Mack Sales & Service v. NLRB*, 522 U.S. 359, 367 (1998), however, the Supreme Court held that "doubt" means *uncertainty*, not *disbelief*.

In *Levitz*, 333 NLRB 717 (2001), the Board overruled the line of cases that had held that an employer could withdraw recognition on the basis of doubt or uncertainty regarding the union's majority status. The Board held that, henceforth, an employer may withdraw recognition only by showing that, at the time of withdrawal, the union had actually lost majority support. However, the Board found it appropriate not to apply the new standard retroactively to pending cases such as this, but only prospectively. Accordingly, the Respondent here need only show that it had a good-faith reasonable uncertainty as to the Union's majority support at the time it withdrew recognition.

In *Levitz*, Chairman Hurtgen disagreed with the Board's overruling the principle that an employer can withdraw recognition from an incumbent union if the employer has a good-faith uncertainty as to the union's majority status. Therefore, he agrees with the application of this principle in the present case.

[6] In *St. Elizabeth Manor*, *Inc.*, 329 NLRB 341 (1999), the Board held that, once a successor employer's obligation to recognize an incumbent union has attached, the union is entitled to a reasonable period of time for bargaining without challenge to its majority status through a decertification effort, an employer (RM) petition, or a petition from a rival union. However, there is no allegation here that the Respondent's withdrawal of recognition was invalid because bargaining had not taken place for a reasonable period of time.

Chairman Hurtgen dissented from the rule adopted by the Board in *St. Elizabeth Manor*, *Inc*., that bars challenges to a union's majority status for a reasonable period of time following the point at which a successor employer's obligation to recognize an incumbent union attaches.

In addition, the Respondent argued to the judge that the Union's refusal to negotiate since September 17 indicated that it no longer desired to represent the employees.[7]

We agree with the judge that, whether considered individually or cumulatively, the factors relied on by the Respondent would not create a good-faith reasonable doubt (uncertainty) as to the Union's majority status. As the judge found, the April 21 petition indicated that the signers were displeased with Quiñones as their representative at the bargaining table, not with the Union itself.[8] Moreover, the petition was executed some 7 months before the December 3 withdrawal of recognition. Such stale evidence is not a reliable indicator of the employees' union sentiments at the time recognition was withdrawn.[9] This is especially true since there were significant changed circumstances between the April petition and the December withdrawal of recognition. Quiñones had been replaced as the Union's negotiator in July, when Arturo Grant became the Union's sole representative in negotiations. Thus, the employees' earlier statements indicating unhappiness with Quiñones were not a reasonable basis for questioning the Union's majority support in December, when the Respondent withdrew recognition.

The April petition also indicated that the signers did not want union dues to be withheld from their paychecks. However, employees' opposition to dues checkoff is irrelevant to the issue of whether they support the union.[10] As the judge noted, employees may prefer to pay their dues only at convenient times or in person, or may even be "free riders" who desire and accept union representation without joining the union and paying dues.

Finally, as the judge found, the Respondent overstated the percentages of the unit employees who signed the petition. A number of employees who signed the petition were no longer working at the hospital in December, and several of the individuals signed the petition more than once. These facts may explain, in part, the Respondent's mistakes. In any event, the Respondent was given a copy of the April 21 petition on August 21. It thus had more than 3 months before it withdrew recognition on December 3 in which to verify the number of current employees who had signed it, yet it apparently did not. Had it done so, it would have known that a majority of the current employees in at least two, and possibly three, of the units had *not* signed the petition.[11] The Respondent's failure to verify the evidence on which it purported to rely in withdrawing recognition strongly suggests that it did not act in good faith.[12]

We also agree with the judge that the August 20 decertification petitions themselves did not justify the withdrawal. A decertification petition by itself will not support withdrawal of recognition because such petitions require the support of only 30 percent of the unit employees.[13] Here, as the judge found, aside from the April 21 petition discussed above, there is no evidence of the extent of employee support for the petitions.[14]

[7] In its December 3 letter, the Respondent noted the Union's lack of "affirmative action" to continue negotiations; however, it did not explicitly cite that factor as a basis for doubting the Union's majority status.

[8] In fn. 5 of his decision, the judge stated that the record does not make clear who Quiñones was. In fact, the record indicates that he was the Union's executive director. There is no contention, however, and no evidence that Quiñones was the alter ego or personification of the Union. Thus, we cannot infer that opposing him was tantamount to opposing the Union.

In *Allentown Mack*, the Supreme Court held that employees' expressions of dissatisfaction with the quality of representation provided by the union "could be probative to some degree" of the employer's good-faith reasonable doubt or uncertainty. 522 U.S. at 369. Because Quiñones was the Union's executive director and negotiator at the time of the April petition, the employees' expressions of dissatisfaction with him could be interpreted as dissatisfaction with the quality of representation provided by the Union. However, as discussed infra, even assuming that the petition was therefore "probative to some degree" of employee sentiment in April, we find that the April petition was stale and that circumstances had significantly changed at the time Respondent withdrew recognition in December.

[9] See, e.g., *Rock-Tenn Co.*, 315 NLRB 670, 672 (1994), enfd. 69 F.3d 803 (7th Cir. 1995), overruled on other grounds in *Chelsea Industries*, 331 NLRB 1648 (2000).

[10] See, e.g., *Henry Bierce Co.*, 328 NLRB 646, 648 (1999), enfd. in relevant part mem. 234 F.3d 1268 (6th Cir. 2000).

Chairman Hurtgen expresses no view as to the correctness of *Henry Bierce Co*.

[11] The parties disagreed about the number of employees that should be included in some of the units. Because we find that the number of employees who signed the April 21 petition is irrelevant, we find it unnecessary to resolve the dispute over the makeup of the units.

[12] See, e.g., *Virginia Concrete Co.*, 316 NLRB 261 (1995), enfd. 75 F.3d 974 (4th Cir. 1996). There, the Board found that the employer ignored lists and numbers prepared by its personnel manager in order to conclude that the bargaining unit was smaller than it actually was, and thus premised its withdrawal of recognition on faulty reasoning. In those circumstances, the Board questioned the employer's good faith in approaching the employee count. 316 NLRB at 268. We recognize that the Board in *Levitz* found that the employer had a good-faith uncertainty, based on an employee petition, as to the union's continued majority status even though the employer refused to review the union's evidence purportedly showing that it retained majority support. The Board reasoned that, even if the union's evidence had indicated continued majority support, the employer still could have harbored a reasonable uncertainty based on conflicting evidence. 333 NLRB 717. *Levitz*, however, there was no contention that the petition on which the employer relied was unreliable in itself, that is, that it was based on faulty information or assumptions by the employer. Here, by contrast, the Respondent relied on information that it would have realized was flawed, had it attempted to verify that information. It is the failure to verify its own information that we find to indicate a lack of good faith.

[13] See, e.g., *Dresser Industries*, 264 NLRB 1088, 1088 (1982).

[14] For the reasons discussed above, the April 21 petition, which was submitted with the August 20 decertification petitions, does not indicate that the Union had lost majority support on August 20.

With respect to the June 21 demonstration, we find that it was also too remote in time from the December 3 withdrawal of recognition. In any event, as the judge found, the record does not indicate the reason for the demonstration,[15] how many employees participated, or even whether the participants were unit employees. Absent such information, we are unable to conclude that the June demonstration could reasonably create uncertainty as to the Union's majority status in December.[16]

We also find that the lack of unit employee participation in negotiations is not evidence of loss of majority status.[17] As the judge noted, employees may not want to take part in negotiations because they fear being identified as union supporters, because negotiating sessions conflict with their work schedules,[18] or for other reasons that have nothing to do with their support for the union.

Finally, the bargaining hiatus after September 17 does not mean that the Union had lost interest in representing the employees. The Board has held that, to base a claim of good-faith uncertainty on the absence of union activity, an employer must show that the union was neither willing nor able to represent the employees at the time its majority status was questioned.[19] The Respondent made no such showing here. As the judge found, the Union made two information requests during the bargaining hiatus. And on October 26, the Union requested access to the Respondent's facility to distribute a union newspaper. Thus, contrary to the Respondent, the Union continued to actively represent the employees even while no negotiations were being conducted. In any event, the September 17–December 3 bargaining hiatus was too brief to support the Respondent's withdrawal of recognition.[20] Thus, we agree with the judge that the Union abandoned neither the employees nor the negotiations.

In sum, we find that the Respondent produced no evidence that would even arguably indicate that the Union had lost majority support as of December 3. It relies instead on 7-month-old statements of dissatisfaction with a union official who had long since been replaced as the Union's negotiator, a demonstration of some kind that took place more than 5 months before the withdrawal and which may or may not have been supported by any unit employees, and other factors that either did not exist (the Union's asserted lack of interest in representing employees) or are simply not evidence of loss of majority status (lack of employee participation in contract negotiations, the mere filing of a decertification petition, and employee opposition to dues checkoff). Whether considered individually or cumulatively, we find that these factors fall short of establishing a good-faith reasonable doubt or uncertainty of the Union's continued majority status in any of the bargaining units at the time of the Respondent's withdrawal of recognition. We therefore affirm the judge's finding that the Respondent's withdrawal of recognition was unlawful.

Finally, we also agree with the judge, for the reasons fully set forth in *Caterair International*, 322 NLRB 64 (1996), that an affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful withdrawal of recognition from the Union. We adhere to the view, reaffirmed by the Board in that case, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective bargaining representative of an appropriate unit of employees." Id. at 68.

In several cases, however, the United States Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727, 734 (D.C. Cir. 2000); *Lee Lumber & Building Material Corp. v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent*, the court stated that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' § 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." 209 F.3d at 738.

We respectfully disagree with the court's requirement, for the reasons set forth in *Caterair*.[21] Nevertheless, we have examined the particular facts of this case as the court requires, and we find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Respondent's unlawful withdrawal of recognition. At the

[15] As noted by the judge, the record simply indicates that the Union and a group of Hospital employees held opposing demonstrations and press conferences outside the facility. The stipulated record is silent as to why the counterdemonstrations and press conferences were held.

[16] See, e.g., *Allied Industrial Workers v. NLRB*, 476 F.2d 868, 881 (D.C. Cir. 1973).

[17] See, e.g., *Beverly Farm Foundation*, 323 NLRB 787, 794 (1997), enfd. 144 F.3d 1048 (7th Cir. 1998).

[18] Here, the bargaining sessions were held during business hours at a location away from the hospital.

[19] *Pennex Aluminum Corp.*, 288 NLRB 439, 441–442 (1988), enfd. mem. 869 F.2d 590 (3d Cir. 1989).

[20] See, e.g., *Spillman Co.*, 311 NLRB 95 (1993), enfd. mem. 41 F.3d 1507 (6th Cir. 1994) (6-month hiatus insufficient).

[21] Chairman Hurtgen agrees with the court's requirement.

same time, an affirmative bargaining order does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because its attendant bar to raising a question concerning the Union's continuing majority status is no longer than is reasonably necessary to remedy the ill effects of the violation.

By unlawfully withdrawing recognition, the Respondent clearly signaled to the employees its disregard for their collective-bargaining representative. Although more than 2 years have elapsed since it occurred, the Respondent's unlawful withdrawal of recognition would likely have a continuing and long-lasting negative effect on employee support for the Union and for collective bargaining altogether.

(2) An affirmative bargaining order also serves the important policies of the Act to foster meaningful collective bargaining and industrial peace. The temporary decertification bar inherent in this order removes the Respondent's incentive to delay bargaining or to engage in any other conduct that would further undercut employee support for the Union. It also ensures that the Union will not be pressured, by the possibility of a decertification petition, to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order. Providing this temporary period of insulated bargaining will also afford employees a fair opportunity to assess the Union's performance in an atmosphere free of the Respondent's unlawful conduct.

(3) A cease-and-desist order, alone, would be inadequate to remedy the Respondent's refusal to bargain with the Union in these circumstances because it would permit a decertification petition to be filed before the Respondent had afforded the employees a reasonable time to regroup and bargain through their chosen representative in an effort to reach a collective-bargaining agreement. Such a result would be particularly unfair here, where the Respondent's unlawful conduct is likely to have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. Indeed, permitting a decertification petition to be filed immediately might very well allow the Respondent to profit from its own unlawful conduct. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued representation by the Union.

For all of the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the Respondent's unlawful refusal to bargain with the Union in this case.[22]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Metro Health, Inc., d/b/a Hospital Metropolitano, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Refusing to recognize and bargain with Unidad Laboral de Enfermeras (os) y Empleados de la Salud as the exclusive collective-bargaining representative of its employees in the following appropriate units:

Unit A

All Licensed Practical Nurses, Operating Room Technicians, X-Ray Technicians, Respiratory Therapy Technicians and Auxiliary Pharmacists; excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit B

All registered nurses, excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit C

All orderlies, ward clerks, office clerks, medical records technicians and/or clerks transcribers, EKG technicians, supply technicians, laboratory aides, printing office employees, telephone operators, warehouse clerks, and pharmacy clerks; excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

[22] Chairman Hurtgen agrees that, based on the conduct in the instant case, an affirmative bargaining order is appropriate. The reasons the Respondent asserted for withdrawing recognition from the Union were insubstantial, and the Respondent's unwarranted withdrawal of recognition would diminish the Union in the eyes of the employees. In these circumstances, it is appropriate to give the Union a reasonable period in which to regain the status that it enjoyed before the Respondent's unlawful conduct.

Unit D

All business office employees, billing and collector clerks, cashiers, inventory control clerks, and accounting clerks; excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit E

All dietary employees, linen supply employees, maintenance employees, housekeeping employees, and drivers; excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, guards, and supervisors as defined in the Act.

Unit F

All pharmacists and medical technologists; excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize and bargain with Unidad Laboral de Enfermeras(os) y Empleados de la Salud as the exclusive collective-bargaining representative of our employees in the following bargaining units.

Unit A

All Licensed Practical Nurses, Operating Room Technicians, X-Ray Technicians, Respiratory Therapy Technicians and Auxiliary Pharmacists; excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit B

All registered nurses, excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit C

All orderlies, ward clerks, office clerks, medical records technicians and/or clerks transcribers, EKG technicians, supply technicians, laboratory aides, printing office employees, telephone operators, warehouse clerks, and pharmacy clerks; excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit D

All business office employees, billing and collector clerks, cashiers, inventory control clerks, and accounting clerks; excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit E

All dietary employees, linen supply employees, maintenance employees, housekeeping employees, and drivers; excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, guards, and supervisors as defined in the Act.

Unit F

All pharmacists and medical technologists; excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the Unidad Laboral de Enfermeras (os) y Empleados de la Salud and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the above bargaining units.

METRO HEALTH, INC., D/B/A HOSPITAL METROPOLITANO

Laura Vázquez, Esq., for the General Counsel.
José R. González and *Jorge Pizarro García, Esqs*., for the Respondent.
Radames Quiñones Aponte, for the Charging Party.

DECISION

GEORGE ALEMÁN, Administrative Law Judge. This matter came to be heard in Hato Rey, Puerto Rico, on June 28, 2000, following a charge filed by the Charging Party, Unidad Laboral de Enfermeras (os) y Empleados de la Salud (the Union or ULEES), on November 5, 1998 (amended February 24, 1999), and issuance of a complaint on May 28, 1999, by the Regional Director for Region 24 of the National Labor Relations Board (the Board). The complaint alleges that the Respondent, Metro Health, Inc., d/b/a Hospital Metropolitano, violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by withdrawing recognition from, and thereafter failing and refusing to bargain collectively and in good faith with, the Union representing its employees. By answer dated June 16, 1999, the Respondent admits withdrawing recognition from the Union but denies that its conduct was in any way unlawful or violative of the Act, arguing instead that its actions were legitimately motivated by a good-faith doubt that the Union enjoyed majority support among its employees.

All parties at the hearing were afforded full opportunity to call and examine witnesses, to submit oral and written evidence, and to argue orally on the record. However, at the start of the hearing, the parties entered into a stipulation of facts and agreed not to call any witnesses in support of their respective positions. Instead, they agreed that the merits of their positions should be determined solely on the basis of the documentary evidence submitted with their stipulation of facts.[1] On the basis of the stipulated record, and after considering briefs filed by the General Counsel and the Respondent,[2] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Puerto Rico corporation, with an office and facility in Rio Piedras, Puerto Rico, is in the business of providing health care services. During the 12-month period preceding issuance of the complaint, the Respondent's gross revenues exceeded $250,000, and, during the same period, it purchased and received goods and materials valued in excess of $50,000 directly from points and places located outside the Commonwealth of Puerto Rico. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Stipulated Facts

In 1996, the Union was certified by the Board as the exclusive collective-bargaining representative of six separate units of employees, identified here as units A, B, C, D, E, and F, employed by Fundación Hospital Metropolitano, Inc., the Respondent's predecessor, at the Rio Piedras, Puerto Rico facility.[3] Following certification, the Union and the predecessor engaged in negotiations but failed to reach agreement. On March 11, 1998,[4] the Respondent acquired the predecessor's assets and began operating the Rio Piedras facility in unchanged form and became employer of the predecessor's employees. On March 23, the Respondent, through its attorney, Jorge Pizarro, notified the Union that it wished to initiate bargaining. Negotiations thereafter began on April 3, and continued through September. The parties stipulated that bargaining on behalf of the Union during these negotiations was conducted by nonemployee union representatives. However, it does appear from paragraph 8 of the stipulation that the Union's bargaining committee included at least one employee, Anibal Pérez.

On April 21, numerous employees in the various units signed the following petition:

> The undersigned below, all of them employees of hospital Metropolitano, disallow Mr. Radames Quiñones Aponte to represent us or to bargain any employment condition in our name. In addition, we will not authorize dues check-off in favor of ULEES as an employment condition.[5]

[1] The parties' stipulation was received into evidence as GC Exh. 2; the supporting documents were received as Jt. Exhs..

[2] The General Counsel's brief and the Respondent's brief are referred to respectively as "GC Br." and "R Br."

[3] **Unit A** includes: all Licensed Practical Nurses, Operating Room Technicians, X-Ray Technicians, Respiratory Therapy Technicians and Auxiliary Pharmacists. **Unit B** includes: all Registered nurses. **Unit C** includes: all orderlies, ward clerks, office clerks, medical records technicians and/or clerks transcribers, EKG technicians, supply technicians, laboratory aides, printing office employees, telephone operators, warehouse clerks, and pharmacy clerks. **Unit D** includes: all business office employees, billing and collector clerks, cashiers, inventory control clerks, and accounting clerks. **Unit E** includes: all dietary employees, linen supply employees, maintenance employees, housekeeping employees, and drivers. **Unit F** includes: all pharmacists and medical technologists. Excluded from all of the above units are all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

[4] Unless otherwise indicated, all dates are in 1998.

[5] There is no indication in the record that Ruberté received the petition at any time before August 21, when, as discussed infra, certain unidentified employees handed him the petition together with several decertification petitions that had been filed with the Board the day before. While the record does not make clear who Quiñones was, or what his role may have been in the negotiations, the parties are in apparent agreement that Quiñones was a union official. (GC Br. 8; R Br. 13.)

The petition, containing eight pages of employee signatures, was addressed to Respondent's administrator, Henry Ruberté. (See Jt. Exhs. 3 & 3[a].) There is no indication in the record, however, that Ruberté received the petition at any time prior to August 21, at which time the April 21 petition, as noted below, was delivered to Ruberté together with several decertification petitions which Pérez had filed with the Board on August 20.

On June 21, while negotiations were still ongoing, the Union and a group of hospital employees held opposing demonstrations and press conferences outside the facility. The stipulated record, however, is silent as to the reason behind the Union's demonstration, and as to why the counterdemonstrations and press conferences were held. Nor does it reveal how many, or which, employees took part in the counterdemonstrations, e.g., whether they were ULEES-represented bargaining unit members or nonunit employees. Sometime in July, Arturo Grant became the Union's sole representative at the negotiations. It is unclear, however, if Grant was put in that position in response to the employees' April 21 petition.

As noted previously, on August 20, Pérez filed separate decertification petitions with the Board seeking to have the Union removed as the exclusive bargaining agent of the Respondent's employees in all six bargaining units, submitting, in support thereof, the April 21 employee petition.[6] As further noted, the next day, several employees met with Ruberté and provided him with copies of the decertification petitions and the April 21 petition. The stipulation does not disclose how many employees attended this meeting, whether they were unit or nonunit employees, what, if anything, was said by these unidentified employees to Ruberté, or whether any conversation in fact took place.

The parties' last bargaining session was between Pizarro and Grant on September 17. While the parties agree that Grant ended the meeting, an exchange of letters following that meeting reveals disagreement over why Grant suspended negotiations that day. Thus, in a September 17 letter, and again in a December 3 letter, Pizarro asserts that Grant suspended the negotiations pending the Board's resolution of certain unfair labor practice charges the Union had filed against the Respondent. In apparent disagreement with Pizarro, Grant in a December 16 letter, accuses Pizarro of "distorting the data and facts regarding the negotiations," and avers that it was the Respondent's bad-faith bargaining stemming from its change of position regarding proposals previously agreed on by the parties, as well as Pizarro's "arrogant and disparaging attitude" towards him, which prompted him, Grant, to end the September 17 bargaining session.[7]

On September 30 and October 13, the Union submitted written requests for information to the Respondent (Jt. Exhs. 5[a], 6[a]). By letter dated November 13, the Respondent denied the Union's requests on grounds that the parties did not have a collective-bargaining agreement, and because the parties were not engaged in collective bargaining due to the Union's refusal to meet with "the employer's bargaining committee." The letter advised the Union that the information would not be provided "until the negotiations start again" at which time the Respondent would "evaluate the relevancy of each one of the documents" sought by the Union. (J. Exh. 10[a].) On November 5, the Union filed the charge in this case alleging, inter alia, that the Respondent had violated the Act by refusing to furnish it with the requested information (GC Exh. 1[a]).

By letter dated December 3, the Respondent informed the Union it was withdrawing its recognition of ULEES because it had reason to believe, based on the occurrence of several events, that ULEES no longer enjoyed the support of a majority of its unit employees. To support its claim that the Union no longer enjoyed majority support, the Respondent inserted in the letter a chart reflecting the number of employees in each unit who had signed the April 21 petition, and what percentages they represented of the total number of employees in each unit.[8] The events cited by the Respondent in its letter in support of its good-faith doubt included the decertification petitions it received from employees on August 21, along with the April 21 petition signed by employees,[9] the counterdemonstrations held by employees on June 21, during the Union's own demonstration, and the fact that since July, Grant had been the Union's sole negotiator and that no employee had participated in those negotiations. By letter dated December 17, the Union responded to the Respondent's December 3 letter, accusing it of engaging in bad-faith bargaining, and insisting that the Union was willing to continue bargaining if the Respondent were to do so in good faith, and requesting that the negotiations be resumed. The letter advises the Respondent that ULEES had set aside December 24, for the resumption of such bargaining. (Jt. Exh. 12[a].) Pizarro responded to the Union's letter with another letter dated December 21, reiterating the position taken in his previous letters that it was the Union, not the Respondent, that had refused to conduct any further negotiations until after the unfair labor practice charges had been resolved, and reaffirming the Respondent's decision to withdraw recognition from the Union. (Jt. Exh. 13[a].)

On February 24, 1999, the Union, as noted, filed an amended charge alleging, inter alia, the Respondent's December 3 withdrawal of recognition and refusal to bargain as unlawful (Jt.

[6] See GC Exh. 2 at par. 9.

[7] See Jt. Exhs. 4(a), 11(a), and 12(a).

[8] According to the percentage data provided to the Union by the Respondent in its December 3 letter, 67 percent of employees in unit A, 56 percent in unit B, 59 percent in unit C, 73 percent in unit D, 81 percent in unit E, and 57 percent in unit F, signed the April 21 petition. However, on brief (R Br. 14), the Respondent concedes that the percentage figures listed in its December 3 letter, and on which it presumably relied, in part, to justify its withdrawal of recognition, were wrong.

[9] The December 3 letter contained certain factual misrepresentations. Thus, contrary to the letter's claim that "a considerable number of employees" and "several original members of the Union's bargaining committee" had signed the petition for decertification, only ñ' name appears on the decertification petitions. Further, the Respondent on brief concedes that the percentages shown in the December 3 letter of employees who signed the April 21 petition and who, in its view, no longer supported the Union, were incorrect. Thus, it admits that the "actual percentages were less than originally calculated by the hospital" (R Br. 14).

Exh. 1[c]).[10] By letters dated June 3 and 7, 1999, the Union again requested bargaining, but by letter dated June 12, the Respondent again refused to do so, suggesting instead that the Union petition the Board for an election "to determine if in fact the majority of the employees want to continue being represented by ULEES." (Jt. Exhs. 14[a], 15[a], and 16[a].) The General Counsel, as noted, contends, and the Respondent denies, that the withdrawal of recognition and refusal to bargain was unlawful.

Discussion

The legal principles applicable here are fairly straightforward and well established. Thus, following expiration of a union's certification year, the union's irrebuttable presumption of majority status becomes a rebuttable one. *Burger Pits*, 273 NLRB 1001 (1984). To rebut that presumption, an employer must show, by a preponderance of evidence, either (1) an actual loss of majority support, or (2) objective factors sufficient to support a reasonable and good-faith doubt of the union's majority support. Id., also, *Laidlaw Waste Systems*, 307 NLRB 1211 (1992); *Hajoca Corp.*, 291 NLRB 104 (1988). An employer's unfounded speculation or a subjective state of mind will not suffice to satisfy a reasonable doubt defense. *National Upholstering Co.*, 311 NLRB 1204 (1993), quoting from *Bickerstaff Clay Products Co. v. NLRB*, 871 F.2d 980, 985 (11th Cir. 1989). Applying these principles to the case at hand, I find that the factors cited by the Respondent, whether viewed separately or in combination, would not have given the Respondent reason to doubt the Union's majority status or justified its withdrawal of recognition.[11]

The Respondent, as noted, based its withdrawal of recognition, in part, on the decertification petitions filed by Pérez on August 20, and on the April 21 petition. It asserts, on brief (R Br. 12–13) that the fact that the decertification petitions were signed by a member of the Union's bargaining committee, and were accompanied by the eight-page April 21 petition containing the signatures of unit employees, was sufficient to raise a good-faith reasonable doubt as to the Union's majority status. (R Br. 12–13.) I disagree.

Regarding the April 21 petition, I find nothing in its wording to suggest that employees were either repudiating the Union as their bargaining representative or lending support to a decertification drive. Rather, as described above, the April 21 petition is, on its face, nothing more than a statement of opposition by certain unit employees to Quiñones, presumably a union agent, representing them or to bargain on their behalf in contract talks between the parties, and to having dues checkoff made a condition of employment. Notwithstanding the April 21 petition's rather clear and precise language, the Respondent would have me believe that the employees' "dissatisfaction and disapproval" of Quiñones was also a reflection of their "dissatisfaction and disapproval" of the Union itself (R Br. 13). I can draw no such inference here, for the April 21 petition signers may very well have had reasons, wholly unrelated to their personal views on or sentiments toward the Union, for wanting Quiñones removed as the Union's negotiator. Employees, for example, could simply have viewed Quiñones as an ineffective negotiator; or Quiñones, for that matter, could have fallen into disfavor with certain unit employees prompting the petition drive to have him ousted as their representative at the bargaining table. The Respondent, who, as noted, bears the burden of establishing the Union's loss of majority by a preponderance of the evidence, has produced no evidence whatsoever on the underlying reasons for the April 21 petition. Its assertion, therefore, that those employees who signed the April 21 petition did so because they were dissatisfied with and disapproved of Quiñones, like its claim that said "dissatisfaction and disapproval" of Quiñones constituted a similar rejection of the Union as their bargaining representative, lacks evidentiary support, and amounts to nothing more than speculation and conjecture.

However, assuming arguendo, that employees through the April 21 petition were indeed conveying a "dissatisfaction and disapproval" of Quiñones, such a statement of employee disaffection with the Union's choice of negotiator is not equivalent to a withdrawal of employee support for the Union as their exclusive bargaining representative. See, e.g., *Torch Operating Co.*, 322 NLRB 939, 943 (1997); *Phoenix Pipe & Tube Co.*, 302 NLRB 122 (1991); *Destileria Serrales*, 289 NLRB 51 (1988), enfd. 882 F.2d 19 (1st Cir. 1989); also *Briggs Plumbingware, Inc. v. NLRB*, 877 F.2d 1282, 1288 (6th Cir. 1989); *Retired Persons Pharmacy v. NLRB* 519 F.2d 486 (2d Cir. 1975). As long held by the Board, employee conduct offered by an employer to sustain a reasonable doubt defense "must demonstrate a clear intention by the employees not to be represented by the union." *Ambac International*, 299 NLRB 505, 506 (1990). No such clear intention is evident here from the petition language calling for Quiñones' removal.

Nor was the Respondent justified in assuming that employees no longer supported the Union because employees signing the April 21 petition opposed a dues-checkoff requirement, for the Board has long held that the fact that less than a majority have authorized such checkoffs is immaterial to the issue of majority status.[12] *Gulfmont Hotel Co.*, 147 NLRB 997, 1001–1002 (1964), enfd. 362 F.2d 588 (5th Cir. 1966). *Tesoro Petroleum Corp.,* 174 NLRB 1285 (1969), enfd. 431 F.2d 95 (9th Cir. 1970). *National Cash Register Co.,* 201 NLRB 1034 (1973); *Harpeth Steel, Inc.*, 208 NLRB 545 (1974); and *Henry Bierce Co.* 328 NLRB 646 (1999). As pointed out by the Board in *Gulfmont Hotel Co.*, supra, there may be any number of reasons, unrelated to their desire for union representation, why employees may not want to have their dues checked off. Thus, some employees may simply prefer, as a matter of principle, to pay their financial obligations in person; others may prefer to decide when and if they can afford to spare the money for dues and fees. Still others might prefer to become "free

[10] Although the charge and amended charge also alleged that the Respondent violated Sec. 8(a)(5) and (1) by refusing to provide the Union with relevant information, promulgating and enforcing an overly broad no-solicitation rule, and subcontracting bargaining unit work without bargaining with the Union, the complaint, as noted, alleges only the December 3 withdrawal of recognition as being unlawful.

[11] The Respondent does not contend, nor does the stipulated record show, that the Union in fact no longer enjoyed majority status.

[12] The Union's majority status, as noted, was established by Board certification, not by a dues-checkoff authorization count.

riders," that is, vote for, accept, and enjoy the benefits of unionization without paying the requisite fees and dues to the union.

Thus, while the April 21 petition was used by Pérez to support the decertification petitions, I find that the Respondent was not justified in assuming from that fact alone, or from anything contained in the April 21 petition itself, that a majority of employees in the various units were no longer interested in being represented by the Union and favored its decertification, for, as found above, the April 21 petition reflects no such desire by unit employees.[13] Nor could the Respondent have assumed that a majority of unit employees were supporting the decertification drive from the fact that on August 21, the decertification petitions and the April 21 petition were delivered to it by employees, for the record, as noted, does not reveal if the employees who delivered the petitions were unit or nonunit employees, nor the number of employees who took part in that endeavor.

Having found that the Respondent was not justified in relying on the April 21 petition to support a good-faith doubt of the Union's majority status, there remains the question whether the decertification petitions alone would have sufficed to create such doubt and permit a lawful withdrawal of recognition. This query, however, must be answered in the negative, for the Board has long held that absent a showing that a majority of employees supported it, a decertification petition, by itself, cannot justify an employer's withdrawal of recognition. *Dresser Industries*, 264 NLRB 1088 (1982); also *Alexander Linn Hospital Assn.*, 288 NLRB 103, 107 (1988); *Architectural Woodwork Corp.*, 280 NLRB 930, 934 (1986); and *Silver Spur Casino*, 270 NLRB 1067 (1984). Except for the rejected April 21 petition, the Respondent has presented no evidence to show that the decertification petitions filed by Pérez on August 20, had the support of a majority of employees in the respective units. Accordingly, I find that the August 20, decertification petitions did not afford the Respondent a good-faith reason to doubt the Union's majority status and to withdraw recognition.

[13] Indeed, there is reason to doubt that a nexus between the April 21 petition and the decertification petitions was ever intended. Support for this proposition can be found in the rather obvious fact that the April 21 petition predates the decertification by 4 months, and that the April 21 petition, as noted, makes no reference to the petition being used in support of a decertification drive. While it is not known what employees who signed the April 21 petition may have been told about its possible use, they clearly would not have known from the language of the petition itself that their signatures were to be used in furtherance of a decertification drive. Given these facts, I find it highly unlikely that the April 21 petition was ever intended to be used in support of the decertification petitions. The record, it should be noted, does not make clear how Pérez obtained copies of the April 21 petition which, as indicated, was addressed to Respondent's administrator, Ruperté. Nor does it explain why Pérez submitted the April 21 petition to the Board along with the decertification petitions. There is, in this regard, no evidence to indicate that Pérez was acting at the behest of those employees who signed the April 21 petition. For these reasons, I view Pérez' use of the April 21 petition to bolster the decertification petitions with a high degree of skepticism. Finally, given my finding that the language of April 21 petition in no way reflected a lack of employee support for the Union, I need not consider whether that petition was signed by a majority of employees in the six bargaining units represented by the Union.

Nor has the Respondent shown that it was justified in doubting the Union's continuing majority status from the fact that certain employees held counterdemonstrations in response to the Union's June 21, demonstrations, for, as discussed above, there is simply no evidence to indicate that unit employees took part in, sponsored, or otherwise supported, said counterdemonstrations. Thus, the assertions made by the Respondent on brief regarding these counterdemonstrations are based only on supposition and conjecture. The Respondent, for example, asserts that the June 21, demonstration held by ULEES was an attempt by the Union to "ignite the lost spark in the employees it purported to represent." The record, however, contains no mention of the reasons for the Union's June 21, demonstration. Nor is there any reference in the record to the level of unit employee support garnered by the Union for its demonstration, further rendering unsubstantiated the Respondent's additional claim that the Union's demonstration did not have the "warm support" of unit employees.

In fact, the only evidence of record concerning the events of June 21, is found in paragraph 7 of the parties' stipulation which simply states that during ULEES' demonstration, counterdemonstrations were also held by a "group of hospital employees." The Respondent in this regard produced no evidence to show why the counterdemonstrations were conducted or who might have taken part in them. In the absence of such evidence, I decline to speculate, as the Respondent would have me do, that the counterdemonstrations were conducted by unit employees and reflected their opposition to the Union. Accordingly, I find without merit the Respondent's claim that the June 21, counterdemonstrations afforded it a reasonable basis to doubt the Union's majority status and withdraw recognition.

Equally without merit is the Respondent's further assertion that the purported lack of employee participation in the negotiations provided a sufficiently objective basis for doubting the Union's majority status. The Board, with court approval, has long held that poor attendance at union meetings or even employee disinterest in participation in negotiations does not warrant an inference that employees do not desire continued union representation. *Beverly Farm Foundation*, 323 NLRB 787, 794 (1997); enfd. 144 F.3d 1048 (7th Cir. 1998); *Colonna's Shipyard*, 293 NLRB 136, 140 (1989); enfd. mem. 900 F.2d 250 (4th Cir. 1990) (per curiam); *Pioneer Inn*, 228 NLRB 1263, 1265 (1977), enfd. 578 F.2d 835 (9th Cir. 1978); *North American Mfg. Co.*, 224 NLRB 1252, 1257–1258 (1976), enfd. 563 F.2d 894 (8th Cir. 1977); Also *Pioneer Press*, 297 NLRB 972, 995 (1990); *Robinson Bus Service*, 292 NLRB 70, 78 (1988); *KEZI-TV,* 286 NLRB 1396, 1398 (1987); and *Vaughan & Sons, Inc.*, 281 NLRB 1082, 1085 (1986). As pointed out by the court in *NLRB v. North American Mfg.*, supra at 897, employee disinterest in attending union meetings or, as in the instant case, bargaining sessions, can be attributed to many causes. Employees, for example, may be reluctant to do so for fear of revealing themselves as union supporters, see *Beverly Farm Foundation v. NLRB*, supra at 1054, or, as the General Counsel here correctly points out on brief, employees may simply have found it difficult to attend the negotiations because of a conflicting work schedule. However, the fact of the matter is that the Respondent has offered no evidence to support its theory

that employees did not attend because they no longer supported the Union. Consequently, its argument in this regard, like the other explanations offered in support of its good-faith doubt defense, is based on pure speculation and is likewise rejected as without merit.

Finally, the Respondent, on brief, suggests implicitly that the Union is no longer interested in representing its employees, asserting in this regard that the Union abandoned the bargaining table on September 13, and thereafter refused to bargain with it, and further has "not made any affirmative effort to renew the negotiations" despite the Respondent's willingness to do so.[14] I disagree. First, the Respondent is simply wrong in asserting that the Union abandoned the negotiations when it ended the September 17 bargaining session. As made clear by its December 13 letter to the Respondent requesting a December 24 session, and by its subsequent June 1999 letters, the Union following the September 17 meeting, has remained ready and willing to resume negotiations. Indeed, it appears that it was the Respondent, not the Union, who, by its June 12, 1999 letter responding to the Union's June 3 and 7, 1999 requests for bargaining, demonstrated its unwillingness to resume negotiations by declining to bargain unless and until the Union consented to a Board election and was recertified by the Board (Jt. Exh. 16[a]). Thus, while the Union may have walked out of the September 17 bargaining session, I find no evidence to indicate that it was totally abandoning the negotiations or in any way relinquishing its right to continue serving as exclusive bargaining representative of the Respondent's unit employees. The Union's subsequent September 30 and October 13 requests for information makes clear that the Union continued to actively represent those employees.

In sum, I find that the Respondent has not met its burden of showing that it had a reasonably based good-faith doubt of the Union's majority status when it withdrew recognition and refused to bargain further with the Union on December 3. Accordingly, its withdrawal of recognition and refusal to bargain amounted to a violation of Section 8(a)(5) and (1) of the Act, as alleged.[15]

[14] The Respondent is raising this defense for the first time on brief, as its December 3 letter makes no mention of the Union's alleged abandonment of the unit as a ground for its withdrawal of recognition and refusal to bargain.

[15] Contrary to the Respondent, the Supreme Court's holding in *Allentown Mack Sales & Service. v. NLRB*, 522 U.S. 359 (1998), does not require a different result. Initially, it should be noted that *Allentown Mack* did not make new law but merely restated and clarified the law on good-faith doubt which had existed for some time. *Catalina Pacific Concrete Co.*, 330 NLRB 144 (1999), Thus, in *Allentown Mack*, the Court found that the Board's "good faith reasonable doubt" test was rational and consistent with the Act. The Court, however, further found that the Board had erred in not considering as relevant to a determination of whether the employer had a good-faith doubt of the union's majority testimony by certain individuals regarding antiunion statements they allegedly overheard employees make. Finding the term "doubt" to be synonymous with "uncertainty," the Court reasoned that when viewed with other objective evidence of record, the employee statements rejected by the Board may very well have created a reasonable "uncertainty" in the employer's corporate mind of the union's majority status. Here, unlike in *Allentown Mack*, there are no antiunion statements attributed to unit employees. While the April 21 petition may be considered an employee statement, it contains no antiunion sentiment and, at most, reflects only anti-Quiñones, and antidues checkoff sentiment. As such, the April 21 petition does not come even close to being objective evidence justifying a withdrawal of recognition, regardless of whether the test is phrased in terms of "good faith reasonable doubt" of the Union's majority support or "genuine, reasonable uncertainty about whether the Union enjoyed the continuing support of a majority of unit employees." See *Henry Bierce Co.*, supra at 647. Also *Scepter Ingot Castings, Inc.*, 331 NLRB 1509 (2000).

CONCLUSIONS OF LAW

1. The Respondent, Metro Health, Inc., d/b/a Hospital Metropolitano, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, Unidad Laboral de Enfermeras (os) y Empleados de la Salud, is a labor organization within the meaning of Section 2(5) of the Act.

3. Since 1996, the Union has been the duly certified collective-bargaining representative of the Respondent's employees in the following appropriate units:

Unit A

All Licensed Practical Nurses, Operating Room Technicians, X-Ray Technicians, Respiratory Therapy Technicians and Auxiliary Pharmacists; *excluding* all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit B

All registered nurses, *excluding* all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit C

All orderlies, ward clerks, office clerks, medical records technicians and/or clerks transcribers, EKG technicians, supply technicians, laboratory aides, printing office employees, telephone operators, warehouse clerks, and pharmacy clerks; excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit D

All business office employees, billing and collector clerks, cashiers, inventory control clerks, and accounting clerks; *excluding* all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit E

All dietary employees, linen supply employees, maintenance employees, housekeeping employees, and drivers; *excluding* all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit F

All pharmacists and medical technologists; *excluding* all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

4. By withdrawing recognition from, and refusing since December 3, to bargain with, the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent shall be ordered to, upon request, bargain with the Union regarding its unit employees' terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. Finally, the Respondent shall be required to post, in English and Spanish, a notice to employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

The Respondent, Metro Health, Inc., d/b/a Hospital Metropolitano, Rio Piedras, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Unidad Laboral de Enfermerasv(os) y Empleados de la Salud which is the exclusive collective-bargaining representative of its employees in the following appropriate units:

UNIT A

All Licensed Practical Nurses, Operating Room Technicians, X-Ray Technicians, Respiratory Therapy Technicians and Auxiliary Pharmacists; *excluding* all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit B

All registered nurses, *excluding* all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit C

All orderlies, ward clerks, office clerks, medical records technicians and/or clerks transcribers, EKG technicians, supply technicians, laboratory aides, printing office employees, telephone operators, warehouse clerks, and pharmacy clerks; excluding all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit D

All business office employees, billing and collector clerks, cashiers, inventory control clerks, and accounting clerks; *excluding* all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit E

All dietary employees, linen supply employees, maintenance employees, housekeeping employees, and drivers; *excluding* all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

Unit F

All pharmacists and medical technologists; *excluding* all other employees, secretaries of the executive director, medical director, comptroller, nursing director, plant and maintenance director, director of personnel and medical faculty, temporary employees, messengers, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the above-described appropriate units concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Rio Piedras, Puerto Rico, copies of the attached notice

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

marked "Appendix."[17] Copies of the notice, on forms provided, in English and Spanish, by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 3, 1999.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[17] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice "Posted by Order of the National Labor Relations Board'' shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''